

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MOHAMMAD S. GALARIA, individually and on behalf of all others similarly situated,)	Case No. 2:13-cv-118
Plaintiff,)	Judge Michael H. Watson
v.)	Magistrate Judge Mark R. Abel
NATIONWIDE MUTUAL INSURANCE COMPANY, a Ohio Corporation,)	
Defendant.)	
)	
ANTHONY HANCOX, individually and on behalf of all others similarly situated,)	Case No. 2:13-cv-257
Plaintiff,)	Judge Michael H. Watson
v.)	Magistrate Judge Mark R. Abel
NATIONWIDE MUTUAL INSURANCE COMPANY, a Ohio Corporation,)	
Defendant.)	

**DEFENDANT NATIONWIDE MUTUAL INSURANCE COMPANY'S
REPLY MEMORANDUM IN SUPPORT OF ITS OBJECTIONS TO THE
MAGISTRATE JUDGE'S ORDER DATED DECEMBER 16, 2013 REGARDING
DEFENDANT'S MOTION TO STAY DISCOVERY**

I. INTRODUCTION.

Plaintiffs' Response To Defendant Nationwide Mutual Insurance Company's Objections to the Magistrate Judge's Order (D.E. 36) fails to respond to the fundamental argument raised by Nationwide Mutual Insurance Company ("Nationwide") that, particularly in data security cases, a motion to stay discovery is appropriate when a pending motion to dismiss involves purely legal determinations. Accordingly, Nationwide respectfully disagrees with the

Magistrate Judge’s (and plaintiffs’) undue focus on burden. Plaintiffs should not be permitted to pursue discovery when, as here, the pending motion would result in dismissal of all plaintiffs’ claims. Plaintiffs do not—and cannot—offer arguments to refute these points.

Moreover, plaintiffs identify the wrong legal standard in their response brief, trying to mislead the Court to focus on so-called “factual issues;” fail to show any prejudice they would suffer by a short continuation of a stay of discovery; and plaintiffs’ discovery requests are in fact unduly burdensome.

Nationwide respectfully objects to the Magistrate Judge’s Order (D.E. 34), and requests that the Court overturn the Order and grant Nationwide’s motion to stay.

II. LAW AND ARGUMENT.

A. Plaintiffs Identify The Wrong Legal Standard In Their Response Brief.

Plaintiffs correctly identify Fed. R. Civ. P. 72(a) as governing objections to a Magistrate Judge’s decision, but improperly focus on the “clearly erroneous,” rather than the applicable “contrary to law” standard. As both parties highlight in the briefs, “[t]he district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a). Plaintiffs then further define “clearly erroneous,” but this is not the correct standard to apply here. Rather, as Nationwide explained in Section II of its Objections to the Magistrate Judge’s Order (D.E. 35 at 3), “[t]he clearly erroneous standard applies to factual findings made by the Magistrate Judge, while legal conclusions are reviewed under the more lenient contrary to law standard.” See Itskin v. Gibson, No. 2:10-CV-689, 2012 WL 787400 (S.D. Ohio Mar. 9, 2012), at *1 (citations and internal quotations omitted). “A court’s review under the contrary to law standard is plenary, and the court may overturn any conclusions of law which contradict or ignore applicable precepts of law,

as found in the Constitution, statutes, or case precedent.” Id. (citations and internal quotations omitted).

Nationwide did not argue in its Objections to the Magistrate Judge’s Order (D.E. 35) that the Magistrate Judge erroneously analyzed the facts, but rather Nationwide respectfully argued that the Magistrate Judge’s Order is contrary to law, based on the Court’s long standing precedent that a stay of discovery is appropriate where a pending dispositive motion is predicated on legal questions that are unaffected by discovery. As argued in Section III.B of Nationwide’s Objections to the Magistrate Judge’s Order (D.E. 35), Nationwide’s pending motion to dismiss is based on two purely legal questions: whether plaintiffs lack standing, and whether plaintiff has adequately stated a claim for relief. If granted, plaintiffs’ complaint will be dismissed in its entirety. As a result, the Court can reach the decisions on these legal questions prior to allowing plaintiffs to conduct discovery.

B. Plaintiffs Fail To Show Any Prejudice By A Short Stay of Discovery.

Plaintiffs mention in their Response that Nationwide is wrong to conclude plaintiffs will not be prejudiced by a stay of discovery (D.E. 36 at 9), but do not offer any examples of prejudice. For instance, plaintiffs do not indicate any deadline they might miss or any evidence that might be lost if discovery is briefly stayed until the motion to dismiss is resolved.

As Nationwide repeatedly has assured plaintiffs and the Court, Nationwide does not make this objection in order to cause delay. If the motion to dismiss is successful, then the entire case would be dismissed, because in addition to its arguments on standing, Nationwide has also moved to dismiss as a matter of law each count of plaintiffs’ complaint for failure to state a claim. And finally, if Nationwide’s motion to dismiss is only partially successful, the scope of

the remaining issues will be narrowed, and both parties can more effectively and efficiently proceed with discovery.

C. Plaintiffs' Discovery Requests Are Unduly Burdensome.

As argued in Nationwide's Objections to the Magistrate Judge's Order (D.E. 35 at 7-8), a court may limit discovery pursuant to Fed. R. of Civ. P. 26 when "the burden or expense of the proposed discovery outweighs its likely benefit." See Miller v. Countrywide Home Loans, No. 2:09-CV-0674, 2010 WL 2246310, at *3 (S.D. Ohio June 4, 2010). A stay is appropriate in data security cases such as this one, because such cases are frequently entirely dismissed, or at minimum, the factual and legal issues are substantially narrowed. See D.E. 35 at 8-9.

Additionally, plaintiffs' discovery requests are burdensome. D.E. 25 at 9-10. They are far-reaching in scope, spanning a time-frame of over five years, dating back to January 1, 2008. The requests broadly seek, for example, "[a]ll documents . . . regarding the Data Breach." D.E. 25 at Exhibit 2. The interrogatories are similarly over-reaching, asking for comprehensive catalogs of substantial amounts of information, such as Interrogatory No. 14, requesting identification of parties that have provided consulting services, hardware or software "relating in any way," to a range of computer devices. D.E. 25 at Exhibit 1. In light of the strong likelihood that Nationwide's motion to dismiss will be granted, or at minimum, granted in part, proceeding with broad discovery at this time is an unnecessary burden to Nationwide, but granting the motion to stay in no way prejudices plaintiffs.

III. CONCLUSION.

For the foregoing reasons, Nationwide respectfully requests that the Court find the Order was contrary to law, and stay discovery in this matter.

Dated: January 27, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendant Nationwide Mutual Insurance Company's Reply Memorandum In Support Of Its Objections To The Magistrate Judge's Order Dated December 16, 2013 Regarding Defendant's Motion To Stay Discovery was filed through the ECF system this 27th day of January, 2014, and will be sent via the ECF system to registered participants, including the persons listed below:

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